

IN THE HIGH COURT OF DELHI

Crl.M.C. No.1752-56/2005

Shroff Publisher & Distributors
Pvt. Ltd. & Ors. Petitioners
! through: Mr.Yakesh Anand and
Mr.Murari Kumar, Advs.

VERSUS

\$ M/s.Springer India Pvt. Ltd. Respondent
^ through : Ms.Vibha Arora, Adv.

RESERVED ON: 17.08.2007

% DATE OF DECISION: 29.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure 1973 for quashing order dated 14.1.2005.

2. Vide order dated 14.1.2005, petitioners were summoned by the learned Metropolitan Magistrate to face trial in the complaint filed by the respondent, M/s.Springer India Pvt. Ltd. under Section 138 of the Negotiable Instruments Act 1881.

3. Case pleaded by the complainant in the complaint is as follows:-

- (a) Petitioner company, Shroff Publishers and Distributors Pvt. Ltd., issued a cheque bearing No.144890 dated 1.8.2004 in the sum of Rs.7,34,000/- drawn on the Saraswat Cooperative Bank, Vashi Mumbai towards part discharge of its liability in the favour of the complainant.
- (b) Complainant presented the cheque for encashment on 5.8.2004 which was returned unpaid with the endorsement 'payment stopped by the drawer'. Complainant was informed about the said dishonour on 5.8.2004 itself.
- (c) Again on 11.11.2004, the complainant presented the cheque to its bank, Deutsche Bank, New Delhi. Cheque was again returned unpaid with the remark 'payment stopped'. Complainant was informed about the dishonour of cheque on 13.11.04.
- (d) On 23.11.2004, complainant sent a statutory notice of demand contemplated under Section 138 of the NI Act to the petitioner company calling upon it to pay the amount of the dishonoured cheque.

(e) Since the petitioner company failed to make payment of the amount of dishonoured cheque within the period of 15 days from the receipt of statutory notice sent by the complainant, complainant filed the present complaint under Section 138 of the N.I. Act 1881 against petitioner company as also its directors (petitioners No.2, 3, 4 and 5 herein).

4. Apart from giving reasons why payment was stopped, petitioners plead that complainant never re-presented the cheque in question to its bank, Saraswat Cooperative Bank Ltd. on 11.11.2004. That the cheque in question was only presented once i.e. on 5.8.2004. That since the complainant had send the statutory notice of demand beyond the period of 30 days as prescribed under clause (b) of proviso to Section 138 of the N.I. Act, present complaint is not maintainable.

5. It is no longer res integra that a cheque can be presented any number of times during the period of its validity (see the decision of the Supreme Court in Sadanandan Bhadran vs. Madhavan Sunil Kumar, AIR 1998 SC 3043).

6. The only controversy involved in this petition is whether cheque in question was re-presented by the

complainant on 11.11.2004.

7. To establish that the cheque in question was presented only once on 5.8.2004, petitioners have placed on record letters of Saraswat Cooperative Bank Ltd dated 4.12.04, 9.12.04, 6.4.05, 14.4.05, 6.5.05 and 30.1.06. In said letters, Saraswat Cooperative Bank Ltd has stated that the cheque in question was presented to it on 5.8.2004 and that it was never re-presented on 11.11.2004.

8. In support of averments made in the complaint, complainant has placed on record letter of Deutsche Bank dated 24.10.05 as also a pay-slip. In the said letter, Deutsche Bank has supported the stand of the complainant that the cheque in question was returned unpaid on 13.11.2004 with the endorsement 'payment stopped'. Pay-slip shows that cheque in question was deposited by the complainant in its bank on 9.11.2004.

9. At this stage I note letter dated 24.2.2006 written by the counsel of the Deutsche Bank addressed to counsel for the petitioners. Relevant part of the said letter reads as under:-

“The cheque No. 144890 had again been deposited with the Bank's Delhi Branch in November, 2004 and had been then sent by the Delhi Branch to the Mumbai Branch of the Bank, where it was discovered that the

cheque/negotiable instrument in question had a defacement with the words 'payment stopped' being written across the face of the negotiable instrument. Accordingly, the cheque was not presented to the Saraswat Cooperative Bank and returned to the Delhi Branch of the Bank. The date of 13th November 2004 appearing in the Bank's letter of 24th October 2005 relates to the date of the return of the said cheque to the Delhi Branch."

10. If complainant's version as to re-presentation of the cheque in question is believed to be true, the position which emerges is that on 11.11.04 complainant deposited the cheque in Deutsche Bank and that Deutsche Bank noting the defacement on the cheque returned it unpaid without presenting it to the drawer's bank, Saraswat Co-operative Bank.

11. In the context of afore-noted position, following 3 issues arise before this Court:-

- (i) What is meant by 'The Bank' as mentioned in clause (a) of the proviso to Section 138 of the NI Act?
- (ii) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the payee of the cheque?
- (iii) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the NI Act?

12. Similar questions came up for consideration before various High Courts.

13. Punjab & Haryana High Court in the decision reported as Om Prakash Vs. Gurcharan Singh (1997) 3 Crimes 433 and Gujrat High Court in decision reported as Arunbhai Nilkantharai Nanawati Vs. Jayaben Prahaladbhai (1999) 3 Crimes 252 have held that a cheque must be presented to the bank on which it is drawn within 6 months from the date of issue of the cheque.

14. An opposite view was taken by the Madras High Court in the decision reported as A.B.K Publication Ltd. Vs. Tamilnadu New Print & Papers Ltd. (1999) 3 Crimes 97. In the said decision, it was held that cheque can be presented either in the payee's bank or in the drawer bank and the date of presentations in respective banks will be reckoned for calculating period of 6 months from the date it was drawn.

15. To answer afore-noted questions, it is important to note Section 138 of the NI Act. Relevant part of the Section reads as under:-

“Where any cheque drawn by a person on an account maintained by him with a banker for payment of any account of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is

returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence

x x x x x

(a) the cheque has been presented to the bank within a period of 6 months from the date on which it is drawn or within the period of its validity, whichever is earlier"

16. Section 3 of the NI Act defines the 'banker' to include any person acting as a banker and any post office saving bank.

17. Section 72 of the NI Act provides that a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relations between the drawer and his banker has been altered to the prejudice of the drawer.

18. The use of the words 'a banker' and 'the bank' in the Section is indicator of the intention of the legislature. The former is indirect article and the latter is pre-fixed by direct article. If the legislature intended to have the same meaning for 'a banker' and 'the bank', there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word 'banker' in Section 3 of the NI Act is pre-fixed by the indefinite article (a)

and the word 'bank' where the cheque is intended to be presented under Section 138 is pre-fixed by definite article 'the'. The same section permits a person to issue a cheque on an account maintained by him with 'a bank' and makes him liable for criminal prosecution if it is returned by 'the bank' unpaid. 'The' is always mentioned to the note particular thing or a person. 'The' would therefore refer implicitly to a specified bank and not any bank.

19. A combined reading of Section 3, 72 and 138 of the Act leaves no doubt that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable.

20. It however does not mean that cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has an option to present the cheque in any bank including the collecting bank where he has his account. But to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawer's bank on which the cheque is drawn within the period of 6 months from the date on which it is shown to have been issued. The non presentation of the cheque to the drawer's bank within the period specified in

Section 138 would absolve the person issuing the cheque of his criminal liability under Section 138 of the NI Act.

21. The observations of the Supreme Court in the decision reported as Sh.Ishar Alloy Steel Ltd. Vs. Jayaswals NECO Ltd. AIR 2001 SC 1161 on this issue are conclusive. In the said case, appellant had issued a cheque dated 21.7.1997 in favour of the respondent. The respondent presented the cheque for payment on 26.9.1997 which was returned unpaid. Again on 20.1.1998, the respondent presented the cheque to its bank i.e. State Bank of India at Raipur. The cheque reached the drawer bank on 20.1.1998 admittedly after 6 months from the date it became payable. The cheque was returned unpaid by the bank of the respondent on 3.2.1998. A notice as required under proviso (b) of Section 138 of NI Act was issued on 10.2.1998 which was received by the appellant on 16.2.1998. A criminal complaint under Section 138 of NI Act was filed against the appellant. Holding that as the cheque was presented for payment beyond the period of 6 months as prescribed under proviso (a) to Section 138 of the NI Act, Supreme Court has held the complaint to be non-maintainable. In para 8 of the said decision, it was observed as under:-

“Thus, 'the bank' referred to in clause (a) to the

proviso to Section 138 of the NI Act means the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.”

22. In the instant case, second presentation of the cheque in question on 11.11.2004 cannot be termed as a 'presentation' as contemplated under Section 138 of the NI Act for the reason bank of the complainant did not presented the cheque in the drawer's bank, Saraswat Co-operative Bank. Therefore, I hold that the cheque in question was presented to the drawer of the cheque only once on 5.8.04.

23. Clause (b) to the proviso of Section 138 of the NI Act requires that notice of demand for payment of amount of dishonour cheque must be sent within period of 30 days from the receipt of information by the bank about the dishonour of cheque.

24. In the instant case, bank intimated the complainant about the dishonour of cheque on 5.8.2004. Thus, notice of demand sent by the complainant on 23.11.04 was beyond the statutory period prescribed under clause (b) of the proviso to Section 138 of the NI Act.

25. I thus hold that the complaint filed by the complainant is non-maintainable.

26. Inevitable conclusion is that the summoning order dated 14.1.05 passed by the learned Metropolitan Magistrate is quashed.

27. No costs.

August 29, 2007
sl

(PRADEEP NANDRAJOG)
JUDGE